

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

THOMAS F. KOVACH,)	
)	
Plaintiff,)	Case No. 3:13-1201
)	Chief Judge Haynes
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

A M E N D E D O R D E R

Plaintiff, Thomas F. Kovach, filed this action under 42 U.S.C. § 1983 asserting claims for unfair employment acts and violation of his civil rights. This Court previously granted the motion of the United States to substitute the United States as the defendant in this case pursuant to 28 U.S.C. § 2679(d)(2). (Docket Entry No. 32).

Before the Court is the United States’s motion to dismiss (Docket Entry No. 61) citing Plaintiff’s failure to exhaust his administrative remedies as required under the Federal Tort Claims Act (“FTCA”). 28 U.S.C. § 2675(a).


Plaintiff bears the burden to plead the Court’s jurisdiction to hear his claim. Gibbs v. Buck, 307 U.S. 66 (1939). As a matter of law, claims under 42 U.S.C. § 1983 apply to the conduct of persons acting under “color of state law.” Carlson v. Green, 446 U.S. 14, 50 n.16 (1980). As to other statutes, Plaintiff’s employment claim requires exhaustion of administrative remedies. Loeffler v. Frank, 486 U.S. 549, 554 (1988). There is not a constitutional right to public employment. Manchester v. Lewis, 507 F.3d 281, 290-91 (6th Cir. 1974). Any alleged personal injury claims would fall under the FTCA.

Before a FTCA claim may be pursued, Plaintiff must exhaust his administrative procedures with the Veterans Administration. McNeil v. United States, 508 U.S. 106, 113 (1993). Although Plaintiff contends that he presented an administrative claim to the Department of Veterans' Affairs, the Court adopts the Government's position that Plaintiff did not present an administrative claim.

Thus, the Defendant's motion to dismiss is **GRANTED** and Plaintiff's claims are **DISMISSED without prejudice** for lack of jurisdiction.

It is so **ORDERED**.

ENTERED this the 24th day of September, 2014.



WILLIAM J. HAYNES, JR.
Chief United States District Judge